

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Pacific Gas and Electric Company (U39-E), San Diego Gas & Electric Company (U902-E), Southern California Edison Company (U 338-E), the California Independent System Operator Corporation, and the ISO Restructuring Trust for an Ex Parte Order Approving the Wind-Down and Dissolution of the ISO Restructuring Trust.

Application 02-02-013
(Filed February 13, 2002)

**OPINION APPROVING THE WIND-DOWN
AND DISSOLUTION OF THE ISO RESTRUCTURING TRUST****1. Summary**

This decision grants the unopposed application of Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDGE), Southern California Edison Company (SCE), the California Independent System Operator Corporation (Cal-ISO), and the ISO Restructuring Trust (ISO Trust) (jointly, applicants) for Commission approval of the wind-down and dissolution of the ISO Trust.¹

¹ The application was filed on February 13, 2002. In Resolution ALJ 176-3080, dated February 21, 2002, we preliminarily categorized this matter as ratesetting and determined that a hearing is not necessary.

2. Background

In Decision (D.) 96-08-038, we approved a method for funding the initial development of the California Independent System Operator (Cal-ISO) and the Power Exchange (PX) by authorizing PG&E, SDGE, and SCE (jointly, utilities) to guarantee an amount not to exceed \$250 million in loans to be taken out by two trusts, the ISO Trust and the PX Restructuring Trust (PX Trust).² The ISO Trust and the PX Trust were established to oversee the preliminary development of the ISO and the PX, respectively.³ ⁴ We subsequently authorized a \$50 million increase in the loan guarantees.⁵

In D.97-09-053, we approved an Amended and Restated Trust Agreement dated September 4, 1997 (the asset transfer agreement) that terminated the ISO Trust's development purpose. This decision also approved the transfer of the ISO Trust's assets and liabilities, except for the loans incurred by the trust and guaranteed by the utilities to Cal-ISO.

Under the asset transfer agreement, closing is to occur in two stages; e.g., an asset transfer closing and a financial closing. The asset transfer closing occurred with the exchange of the developed assets and liabilities of the ISO Trust for a note from Cal-ISO equal to the amount of the CAL-ISO's then outstanding obligations under the loan agreements. Cal-ISO subsequently

² D.99-04-045.

³ Id.

⁴ In D.96-10-044, we amended D.96-08-038 to reflect the provisions of Assembly Bill (A.B.) 1890, regarding electric industry restructuring. AB 1890 was signed into law on September 23, 1996.

⁵ D.97-11-077

issued other promissory notes to the ISO Trust to cover Cal-ISO 's start up and development costs pending start-up of the market and collection of revenues by the Cal-ISO to cover these costs. All notes issued by Cal-ISO to the ISO Trust were returned to Cal-ISO at the final asset transfer closing. The financial closing was to occur upon Cal-ISO's retirement (through the acquisition of alternative financing or otherwise) of all of the ISO Trust's obligations under the loans.

Under our previous decisions and the asset transfer agreement, two different sunset dates apply to the ISO Trust: 1) a one-year sunset date for trust activities regarding asset development; and 2) a five-year sunset date for trust activities regarding financing.⁶ The first sunset date for the ISO Trust was met well before the CAL-ISO commenced commercial operations in March 1998.⁷ The ISO Trust has not conducted any further business activities regarding the trust assets.

The second sunset date, which applies to all financial operations of the ISO Trust, is scheduled to occur no later than September 4, 2002, five years after the date of the asset transfer arrangement.⁸ The ISO Trust is scheduled to wind-down its financial operations before this sunset date.⁹ When the ISO Trust receives the necessary funds from Cal-ISO to repay the loans incurred for Cal-ISO's development and initial financing and repays the loans, the utilities'

⁶ D.99-04-045

⁷ Id.

⁸ Id.

⁹ Id.

loan guarantees are extinguished.¹⁰ The ISO Trust has then completed its remaining purposes and may terminate.¹¹

In D.99-04-045, we found that although Cal-ISO had obtained permanent financing in an amount sufficient to repay its loan from the ISO Trust, Cal-ISO could not draw on the proceeds of its permanent financing until a settlement is reached at the Federal Energy Regulatory Commission (FERC) regarding regulatory must-run plants. However, we closed the docket for the proceeding (A.96-07-001), reasoning that the docket need not remain open to ensure that the loan guarantees would continue until repayment of the loans to the ISO Trust. We noted that since the Commission acts in a supervisory role in approving the wind-down of the ISO Trust, due process would be better served by commencing a new formal proceeding to ensure that a proper transfer and accounting of remaining trust assets and liabilities has occurred.

3. Discussion

Applicants contend that the Commission should approve the wind-down and dissolution of the ISO Trust because the necessary conditions, e.g., finalization of a settlement at FERC regarding regulatory must-run plants and repayment of the loans by Cal-ISO, have now been met.

On April 27, 1999, the Chief Administrative Law Judge at FERC certified a settlement that resolved the pending regulatory must-run issues. FERC issued a

¹⁰ Id.

¹¹ Id.

letter order that approved the settlement on May 28, 1999.¹² The settlement became effective on June 1, 1999.

The verified application indicates that on May 18, 1999, Cal-ISO repaid its loans to the ISO Trust in full, which permitted final financial closing under the asset transfer agreement. Final financial closing of the asset transfer agreement occurred on November 30, 2001. According to the financial statements and independent auditor's report filed by applicants, the ISO Trust has no remaining assets or liabilities.¹³ Cal-ISO's repayment of the loans to the ISO Trust has extinguished the loan guarantees provided by the utilities.

Under these circumstances, we find that the wind-down and dissolution of the ISO Trust is appropriate at this time and approve these actions.

4. Conclusion

For all of the foregoing reasons, we grant the application for approval of the wind-down and dissolution of the ISO Trust, effective immediately.

5. Final Categorization and Waiver of Review Period

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing made in Resolution ALJ 176-3080 (February 21, 2002). Moreover, since

¹² 87 FERC 61,250

¹³ Applicants filed an independent auditor's report prepared by Lautze and Lautze, certified public accountants and financial advisors, dated February 13, 2002; a statement of net assets in liquidation and a statement of changes in net assets in liquidation for the ISO Trust (financial statements) with this application. The financial statements address the period from October 1, 2001 to January 31, 2002 and for the years ended September 30, 2001 and 2000, and show that the ISO Trust had no remaining assets or liabilities as of January 31, 2002.

this proceeding is uncontested and we grant the relief granted, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Findings of Facts

1. The ISO Trust was formed to oversee the development of the Cal-ISO.
2. Under our previous decisions, the ISO Trust obtained loans, which were guaranteed to finance the development and initial costs of the Cal-ISO.
3. Repayment of the loans by Cal-ISO to the ISO Trust would extinguish the loan guarantees provided by the utilities, so that the ISO Trust would wind-down and terminate.
4. In D.99-04-045, we found that although Cal-ISO had obtained sufficient financing to repay its loans to the ISO Trust, the loans could not be repaid until a settlement regarding must run plants was reached at FERC.
5. FERC certified a settlement that addressed must run plants on April 27, 1999 and issued a letter order that approved the settlement on May 28, 1999.
6. The loans incurred by the ISO Trust have been repaid, and the utilities' loan guarantees have been extinguished.
7. The independent auditor's report and financial statements submitted with the application show that the ISO Trust has no remaining assets or liabilities.
8. This application was filed before the applicable sunset date (September 4, 2002) for financial operations of the ISO Trust.

6. Conclusions of Law

1. Necessary conditions for the wind-down and dissolution of the ISO Trust have been met.
2. The ISO Trust should be wound down and terminated.

3. This decision should be effective today in order to allow the timely wind-down and dissolution of the ISO Trust.

O R D E R

IT IS ORDERED that:

1. Applicants shall take any remaining steps necessary to wind-down and dissolve the ISO Restructuring Trust (ISO Trust).

2. Applicants shall file appropriate documentation that confirms the wind-down and dissolution of the ISO Trust with the Commission within 90 days of this order.

3. This proceeding is closed

This order is effective today.

Dated _____, at San Francisco, California.